Pegawai Penyiasat Jenayah Korporat/Kewangan Insp Jeinthan Annanthakrishnan & Anor v Ananthagopi a/l Alaguganesan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-01(NCvC)(W)-131–03 OF 2023
SUPANG LIAN, LIM CHONG FONG AND ALWI ABDUL WAHAB JJCA
29 AUGUST 2025

Tort — False imprisonment — Unlawful arrest and detention by police — Foreigner in Malaysia whilst Covid-19 Movement Control Order was in force was arrested and detained by police for 12 days without being told reason for his arrest and detention — Arresting officer was aware that although detainee's social visit pass had expired Immigration Department Circular allowed foreigners in such situations to validly remain in Malaysia — Initial reason given on record for arrest was that foreigner had entered Malaysia illegally but he was later charged in court for overstaying — Detainee was released when police verified that his travel documents were genuine and Circular was valid — Whether trial court was right in finding arresting officer had no cause to arrest and detain foreigner without first asking him to produce his passport and identification papers and verifying them — Whether police could not justify the 12-day detention — Whether trial court was right in awarding foreigner general and exemplary damages and holding Government vicariously liable for arresting officer's actions

The respondent, a foreigner, had come to Malaysia on 7 March 2020 but because of the then existing Covid-19 Movement Control Order ('MCO'), he could not leave the country before his social visit pass expired on 13 August 2020. On 19th March 2020, the Malaysian Immigration Department issued a circular ('the Circular') allowing foreign nationals to remain in Malaysia even though their visit passes had expired. In the course of investigating a theft case, the first appellant ('A1') and another police officer, on 10 October 2020, raided a house where they found the respondent with the owner of the house. The officers dragged the respondent out of the house, put him in a police vehicle and took him to the police station where he was detained until he was charged in the magistrate's court 12 days later. The record showed that the respondent was initially arrested under s 6(1)(c) of the Immigration Act 1959/63 ('the IA') for entering Malaysia illegally, but his charge in the magistrate's court was for overstaying under s 15(1)(c) of the IA. The respondent pleaded not guilty but bail was denied. After the police had obtained confirmation from the Immigration Department on 5 November 2020 that the Circular and the respondent's passport and visa were valid, the respondent was produced before the magistrate again on 10 November 2020 to be released from custody. Upon his release, the respondent sued, inter alia, the appellants for RM3m in special

damages as well as for general and exemplary damages for unlawfully arresting and detaining him for a total period of 30 days. The trial judge found for the respondent and held the appellants jointly and severally liable to pay the respondent RM180,000 in general damages, RM45,000 as exemplary damages and RM30,000 in costs. The trial judge found as a fact that: (a) the respondent was never informed at the time of his arrest of the reason for his arrest and detention which failure had deprived him of the opportunity to produce his passport which would have established that he had entered the country legally and thus offered no cause for A1 to arrest him; (b) despite knowing about the existence of the Circular, A1 had still proceeded to detain the respondent without giving him an opportunity to produce his travel documents; and (c) even after verifying that the respondent's passport and visa were genuine and the Circular was valid, A1 not only did not release the respondent but recommended that he be charged for overstaying. The instant appeal was against the trial court's decision.

Held, unanimously dismissing the appeal and affirming the High Court's decision:

(1) The trial judge's decision was not plainly wrong in any way to warrant appellate intervention. It was also settled law that an appellate court would generally not interfere with the findings of fact of the trial court which had had the audio-visual advantage in assessing the demeanour and credibility of the witnesses who had testified at the trial (see paras 25–26).

(2) The police raid at the house was connected with investigations into a theft case and not to look for illegal overstayers. The respondent was never investigated or charged for misappropriation or theft under s 378 and s 403 of the Penal Code. Hence, the trial judge was right in finding that A1's justification for arresting and detaining the respondent for an offence under the Immigration Act seemed contrived in afterthought. Otherwise, A1 would have demanded to see the passport and other identification papers of the respondent when they were in the house rather than in the police car on the way to the station. It smacked of a collateral purpose on A1's part as alluded to by the trial judge (see para 27).

(3) There was no evidence that the respondent was violent or resisted arrest. A1 also did not give cogent evidence as to why he did not inform the respondent of the reason for his arrest at the material time. The trial judge was therefore right to hold that A1 did not honestly believe on reasonable grounds that the respondent had committed an immigration offence. Section 51(3)(a) of the Immigration Act 1959/63 posed a higher degree of suspicion before an arrest was made compared to s 23(1)(a) of the Criminal Procedure Code (see para 28).

(4) A1 was callous in continuing to detain the respondent despite knowing of the existence of the Immigration Department's Circular. The appellants did not provide cogent evidence to explain why the respondent had to be detained for 12 days in order for his immigration status to be investigated. In this current age of electronic data and information storage and retrieval, the time taken by the appellants to investigate the matter was unreasonable and unacceptable. The trial judge was right in awarding the damages to the respondent and in holding that the second appellant (Government of Malaysia) was vicariously liable as A1's employer for the latter's conduct in this case (see paras 30-34).

[Bahasa Malaysia summary

Responden, seorang warga asing, telah memasuki Malaysia pada 7 Mac 2020, namun disebabkan Perintah Kawalan Pergerakan Covid-19 ('PKP') yang berkuat kuasa pada ketika itu, beliau tidak dapat meninggalkan negara ini sebelum pas lawatan sosialnya tamat tempoh pada 13 Ogos 2020. Pada 19 Mac 2020, Jabatan Imigresen Malaysia telah mengeluarkan satu pekeliling ('pekeliling tersebut') yang membenarkan warga asing untuk terus berada di Malaysia walaupun pas lawatan mereka telah tamat tempoh. Dalam menjalankan siasatan berhubung satu kes kecurian, perayu pertama ('A1') bersama seorang lagi pegawai polis telah, pada 10 Oktober 2020, menyerbu sebuah rumah dan menemui responden bersama pemilik rumah tersebut. Pegawai-pegawai berkenaan telah mengheret responden keluar dari rumah, memasukkannya ke dalam kenderaan polis dan membawanya ke balai polis, di mana beliau telah ditahan sehingga didakwa di Mahkamah Majistret 12 hari kemudian. Rekod menunjukkan bahawa responden pada mulanya ditangkap di bawah s 6(1)(c) Akta Imigresen 1959/63 ('Akta tersebut') atas kesalahan memasuki Malaysia secara tidak sah, namun pertuduhan yang dikenakan terhadapnya di Mahkamah Majistret adalah bagi kesalahan tinggal lebih masa di bawah s 15(1)(c) Akta tersebut. Responden mengaku tidak bersalah tetapi jaminan telah dinafikan. Selepas pihak polis memperoleh pengesahan daripada Jabatan Imigresen pada 5 November 2020 bahawa terdapat pekeliling tersebut serta pasport dan visa responden adalah sah, responden telah dibawa semula ke hadapan Majistret pada 10 November 2020 untuk dibebaskan daripada tahanan. Setelah dibebaskan, responden telah memfailkan tindakan, antara lain, terhadap perayu-perayu bagi menuntut RM3 juta sebagai ganti rugi khas serta ganti rugi am dan teladan atas penangkapan dan penahanan yang menyalahi undang-undang selama keseluruhan tempoh 30 hari. Hakim bicara memutuskan memihak kepada responden dan mendapati perayu-perayu bertanggungjawab secara bersama dan berasingan untuk membayar kepada responden RM180,000 sebagai ganti rugi am, RM45,000 sebagai ganti rugi teladan dan RM30,000 sebagai kos. Hakim bicara membuat dapatan fakta bahawa: (a) responden tidak pernah dimaklumkan pada masa penangkapannya mengenai sebab penangkapan dan penahanannya, kegagalan yang telah menafikannya peluang untuk mengemukakan pasportnya yang

membuktikan bahawa beliau memasuki negara ini secara sah dan dengan itu tidak memberikan sebarang alasan kepada A1 untuk menangkapnya; (b) walaupun mengetahui kewujudan pekeliling tersebut, A1 tetap meneruskan penahanan responden tanpa memberinya peluang untuk mengemukakan dokumen perjalanan; dan (c) walaupun selepas mengesahkan bahawa pasport dan visa responden adalah tulen serta pekeliling tersebut adalah sah, A1 bukan sahaja gagal membebaskan responden malah telah mengesyorkan supaya responden didakwa atas kesalahan menetap lebih masa. Rayuan ini adalah terhadap keputusan mahkamah bicara tersebut.

Diputuskan, sebulat suara mengenepikan rayuan dan mengekalkan keputusan Mahkamah Tinggi:

(1) Keputusan hakim bicara tidaklah tersalah nyata dalam apa jua aspek sehingga memerlukan campur tangan mahkamah rayuan. Ia juga merupakan prinsip undang-undang yang mantap bahawa mahkamah rayuan secara amnya tidak akan mengganggu dapatan fakta mahkamah bicara yang mempunyai kelebihan audio-visual dalam menilai sikap, kelakuan serta kebolehpercayaan saksi-saksi yang memberi keterangan semasa perbicaraan (lihat perenggan 25–26).

(2) Serbuan polis ke atas rumah tersebut adalah berkaitan dengan siasatan kes kecurian dan bukannya bagi tujuan mengesan pendatang tanpa izin atau menetap lebih had tempoh masa. Responden tidak pernah disiasat atau didakwa atas kesalahan pecah amanah atau kecurian di bawah ss 378 dan 403 Kanun Keseksaan. Oleh itu, hakim bicara adalah betul dalam memutuskan bahawa alasan A1 untuk menangkap dan menahan responden atas suatu kesalahan di bawah Akta Imigresen sebagai alasan terkemudian ('afterthought'). Jika betullah beliau disiasat di bawah kesalahan itu, A1 sepatutnya meminta untuk melihat pasport dan dokumen pengenalan diri responden semasa mereka berada di dalam rumah tersebut, dan bukannya hanya berbuat demikian ketika berada di dalam kenderaan polis dalam perjalanan ke balai polis. Keadaan ini mencerminkan suatu tujuan sampingan di pihak A1 sebagaimana didapati oleh hakim bicara (lihat perenggan 27).

(3) Tiada keterangan yang menunjukkan bahawa responden bersikap ganas atau melawan penangkapan. A1 juga gagal mengemukakan keterangan yang meyakinkan mengenai sebab beliau tidak memaklumkan responden tentang alasan penangkapannya pada setiap masa material. Oleh itu, hakim bicara adalah betul ketika memutuskan bahawa A1 tidak mempercayai secara jujur, atas alasan yang munasabah, bahawa responden telah melakukan suatu kesalahan imigresen. Seksyen 51(3)(a) Akta Imigresen 1959/63 memperuntukkan tahap syak yang lebih tinggi sebelum sesuatu penangkapan dibuat berbanding s 23(1)(a) Kanun Tatacara Jenayah (lihat perenggan 28).

(4) A1 telah bertindak secara tidak berperikemanusiaan dengan meneruskan penahanan responden walaupun mengetahui kewujudan pekeliling Jabatan Imigresen. Perayu-perayu tidak mengemukakan keterangan yang kukuh untuk menjelaskan mengapa responden perlu ditahan selama 12 hari bagi tujuan penyiasatan status imigresennya. Dalam era semasa yang berasaskan data dan maklumat elektronik serta sistem penyimpanan dan capaian maklumat yang pantas, tempoh yang diambil oleh para perayu untuk menyiasat perkara tersebut adalah tidak munasabah dan tidak boleh diterima. Hakim bicara adalah betul dalam memberikan ganti rugi kepada responden dan memutuskan bahawa perayu kedua (Kerajaan Malaysia) bertanggungjawab secara vikarius sebagai majikan A1 atas perbuatan A1 dalam kes ini (lihat perenggan 30–34).]

Cases referred to

Abd Latif Sakimin v PP [2009] MLJU 1828, FC (refd)
Ananthagopi Alaguganesan v Menteri Dalam Negeri & Ors [2025] 8 MLJ 181; [2024] 10 CLJ 539, HC (refd)
Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors [2020] 1 MLJ 351, FC (refd)
Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67; [2020] 10 CLJ 1, FC (refd)
Perembun (M) Sdn Bhd v Conlay Construction Sdn Bhd [2012] 4 MLJ 149; [2012] 1 LNS 1416, CA (refd)

Legislation referred to

Criminal Procedure Code s 23(1)(a)
Federal Constitution art 5
Immigration Act 1959/63 ss 6(1), 15(1)(c), 51(3)(a), (5)(b)
Penal Code ss 378, 403, 406

Appeal from: *Pegawai Penyiasat Jenayah Korporat/Kewangan Insp Jeinthan Annanthakrishnan dan satu lagi lwn Ananthagopi a/l Alaguganesan* [2024] MLJU 404 (High Court, Seremban)

Amalina bt Zainal Mokhtar (with Mohamad Shafiq bin Mohd Sazalli and Intan Noor Nazimah Nazi) (Negeri Sembilan State Advisor's Office) for the appellants.
Karthigesan a/l Shanmugam (with Ar Thamayanthy a/p P Rajasekaran and Muniandy a/l Vestanathan) (Karthig Shan) for the respondent.

Lim Chong Fong JCA:

INTRODUCTION

[1] This is an appeal concerning unlawful arrest and detention.

[2] The first and second appellants are a police investigation officer and the Federal Government of Malaysia respectively. A

[3] The respondent is an Indian foreign national.

[4] We heard the appeal on 30 April 2025 and thereafter adjourned our decision to deliberate on the arguments advanced by the parties. B

[5] Now having done so, we give our decision below with the supporting grounds. C

BACKGROUND

[6] The respondent arrived in Malaysia on 7 March 2020 but was stranded by reason of the Covid-19 restrictions enforced pursuant to the Movement Control Order ('MCO'). The social visit pass of the respondent was due to expire on 13 August 2020. D

[7] The Malaysian Immigration Department however on 19 March 2020 issued a circular allowing foreign nationals to remain in Malaysia due to the MCO ('Circular'). E

[8] On 10 October 2020, the police at about 11.55pm, whilst investigating on a reported misappropriation and sale of a deity statue belonging to the Sri Balatandayuthabani temple in Rantau, Negeri Sembilan, conducted a raid at a house in Port Dickson, Negeri Sembilan. F

[9] The first appellant together with another police officer entered the house and arrested the respondent who was with the owner of the house. G

[10] The police dragged the respondent out from the house and ferried him in the police car to the Seremban police contingent headquarters.

[11] The respondent was detained in police custody since his arrest pursuant to s 51(5)(b) of the Immigration Act 1959/63 until he was charged in the magistrates court on 22 October 2020. H

[12] Before the magistrate, the respondent was charged under s 15(1)(c) of the Immigration Act 1959/63 for the offence of overstaying. The appellant pleaded not guilty but bail was denied. I

[13] After the police obtained the confirmation from the Malaysian Immigration Department on the validity of the Circular on 5 November 2020, the respondent was again on 10 November 2020 brought to the magistrates court and released from custody.

[14] The respondent had therefore been detained in police custody for 12 days before he was charged and thereafter detained for a further 18 days before he was finally released.

[15] Consequently, the respondent on 28 December 2020 initiated Suit No NA-21NCvC-16–12 of 2020 in the High Court ('suit').

[16] The respondent contended that he was unlawfully arrested and detained; thus, he claimed for the following reliefs in the suit (in Bahasa Melayu):

(a) Satu perintah bahawa Defendan-defendan membayar sejumlah RM3,000,000.00 sebagai ganti rugi penahanan salah kepada Plaintif dalam tempoh masa (14) hari selepas perintah Mahkamah diberikan;

(b) Defendan-Defendan membayar ganti rugi am kepada Plaintif yang akan ditaksirkan;

(c) Defendan-Defendan membayar ganti rugi teladan kepada Plaintif yang akan ditaksirkan;

(d) Faedah ke atas jumlah penghakiman pada kadar 5% setahun dari tarikh penghakiman sehingga tarikh penyelesaian penuh;

(e) Kos; dan

(f) Apa-apa relif lain yang difikirkan adil, munasabah, atau suai manfaat oleh Mahkamah yang mulia ini.

[17] This has been strenuously denied by the appellants who contended that the actions taken by the police against the respondent were at all material times in accordance with the law.

[18] After trial, the learned High Court judge on 15 February 2023 found for the respondent and gave the following judgment in his favour ('judgment') (in Bahasa Melayu):

(a) bahawa Inspektor Jeinthan Annanthakrishnan ('D5') dan Kerajaan Malaysia ('D6') adalah bertanggungan secara bersesama dan berasingan terhadap penahanan tidak sah (*unlawful arrest*) plaintif daripada 10 Oktober 2020 sehingga 22 Oktober 2020;

(b) bahawa D5 dan D6 diperintahkan untuk membayar secara bersesama dan berasingan kepada plaintif sebanyak (RM15,000 sehari x 12 hari) yang

keseluruhannya berjumlah RM180,000 sebagai ganti rugi am untuk tempoh penahanan tidak sah tersebut;

(c) bahawa D5 dan D6 diperintahkan untuk membayar kepada plaintif secara bersesama dan berasingan sebanyak RM45,000 sebagai ganti rugi teladan;

(d) bahawa D5 dan D6 diperintahkan untuk membayar kos secara bersesama atau dan berasingan sebanyak RM30,000 kepada plaintif; dan

(e) bahawa D5 dan D6 membayar secara bersesama dan berasingan faedah ke atas jumlah penghakiman pada kadar 5% setahun dari tarikh penghakiman sehingga tarikh penyelesaian penuh;

[19] The grounds of judgment of the learned High Court judge ('GOJ') are comprehensive and have been reported in *Ananthagopi Alaguganesan v Menteri Dalam Negeri & Ors* [2025] 8 MLJ 181; [2024] 10 CLJ 539. The GOJ read, inter alia, as follows:

[22] Considering all the circumstances of the case and having seen the testimonies of the witnesses, I was of the view that the version of events as testified by the plaintiff and Mr Mahendran was more representative of the truth.

...

[55] Under s 28 of the Criminal Procedure Code, a person who has been arrested without a warrant must be brought before a magistrate within 24 hours of his arrest. In the present case, the plaintiff was only brought before a magistrate on the 12th day following his arrest.

[56] This was explained by the fact that the arrest of the plaintiff was effected under the Immigration Act 1959/63, which permits the detention of non-citizens for 14 days before the non-citizen must be brought before a magistrate. This is discussed in the following paragraphs.

Arrest under the Immigration Act 1959/63

[57] The power of arrest under the Immigration Act 1959/63 is provided under s 51(3)(a), which reads as follows:

(3)(a) Any police officer, immigration officer or Customs Officer may arrest without warrant any person who he reasonably believes has committed an offence against this Act.

[58] There is a notable difference in the words employed in s 51(3)(a), compared to those in s 23(1)(a) of the Criminal Procedure Code. Under the Immigration Act 1959/63, a police officer may arrest any person without a warrant if 'he reasonably believes' that that person has committed an offence under the Immigration Act 1959/63. By contrast, under the Criminal Procedure Code, an arrest without warrant may be affected if 'a reasonable suspicion exists' that the person to be arrested was concerned in a seizable offence.

[59] In my considered view, the formulation of words suggests that the applicable test under s 51(3)(a) of the Immigration Act 1959/63 is a subjective rather than objective one. What matters is that the arresting officer had an honest belief that an

immigration offence has been committed. Nonetheless, the inclusion of the word 'reasonably' must mean that there is still an element of objectivity: there must be a reasonable basis for the arresting officer to hold such belief.

[60] In my considered view, the onus of proving that the arresting officer held an honest belief that an immigration offence has been committed and that there was a reasonable basis for him to have held that belief, must lie with the arresting officer. This would be consistent with the position under the Criminal Procedure Code.

[61] As alluded to above, a non-citizen detained under a power exercised pursuant to the Immigration Act 1959/63 must be produced before a magistrate within 14 days of his arrest. This is provided for in s 51(5)(b), the material portion of which is reproduced below:

> (5) Notwithstanding anything contained in this Act or in any subsidiary legislation made under this Act —
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> ...
>
> (b) where any person other than a citizen is arrested or detained under this Act, whether for an offence against this Act or otherwise than for such offence, and has not been earlier released, or charged in court for an offence against this Act, or removed from Malaysia under this Act, he shall, within fourteen days of his arrest or detention, be produced before a Magistrate who shall make an order for his detention for such period as may be required by an immigration officer or a police officer for the purpose of investigations into an offence against this Act, or by an immigration officer for the purpose of either making inquiries, or effecting his removal from Malaysia, under this Act,
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> and any provision of this Act or any subsidiary legislation made under this Act providing for the arrest or detention, otherwise than for an offence, of a person who is a citizen, or for the arrest or detention of a person other than a citizen, whether for an offence against this Act or otherwise than for such offence, shall be read as being subject to the provisions of paragraph (a) or (b), as may be applicable:
>
> > Provided that the Magistrate before whom such person is produced under paragraph (a) or (b), as the case may be, shall not authorize or order the detention of such person for a period in excess of the maximum period which may be specified in the provision under which he is to be detained.

[62] On the facts of the present case, the plaintiff was brought before the magistrate before the expiry of the period prescribed under s 51(5)(b) of the Immigration Act 1959/63.

Detention by order of magistrate

[63] The undisputed facts of the present case were that the plaintiff was detained in police custody for 12 days before he was charged. After he was charged, he was detained for a further 18 days under a remand order before his release.

[64] As a general rule, no claim for unlawful arrest or false imprisonment may be made in respect of the period of detention after the arrested person has been charged in court. The authority for this proposition is the decision of the Federal Court in

Chong Fook Kam & Anor v Shaaban & Ors. However, as we shall see, there is an important exception to this general rule.

[65] There are two reasons for the general rule. The first is that the law provides for the immunity of judges and persons acting in a judicial capacity. The second is s 32(1) of the Police Act 1967, which shields a police officer from liability in circumstances where the detention is carried out in compliance with an order of court. A police officer may not, however, avail himself of the protection of s 32(1), where the order of court detaining the arrested person had been procured through a disobedience of the applicable provisions of law on the part of the officer in question.

...

[73] As alluded to at para 56, the fact that the plaintiff was only brought before a magistrate some 12 days after his arrest indicated that Inspector Jeinthan had intended for the arrest to be effected pursuant to the Immigration Act 1959/63. Had this not been the case, the arrest would have contravened s 28 of the Criminal Procedure Code.

[74] It will be recalled that, immediately after the arrest of the plaintiff, Inspector Jeinthan had filed the police report bearing the reference Port Dickson 4638/20. No mention was made in this report regarding the arrest having been effected under the Immigration Act 1959/63. It was only 16 days later that he filed a corrective report making reference to s 6(1)(c) of the Immigration Act 1959/63.

[75] However, the plaintiff had himself testified that he had been told after his arrest and while he was in the police car that he had been arrested because his social visit pass had expired. This supported the conclusion that the corrective report was not a mere afterthought and that Inspector Jeinthan had exercised his powers of arrest under the Immigration Act 1959/63.

[76] Despite this, I was nonetheless of the view that the arrest and the detention of the plaintiff were unlawful. The reasons are as follows:

> (i) first, the plaintiff was not informed at the time of his arrest of the grounds for his arrest and detention. The evidence established at trial showed that the plaintiff was only told of the reasons of his arrest after he had been arrested, when he was in the car and being brought to IPK Seremban.

As explained, the law is very clear on the need to inform the arrested person of the grounds of his detention. The failure to do so amounts to a contravention of the constitutional protection accorded to the plaintiff under art 5(3) of the Federal Constitution, which reads as follows:

> (3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

This right of protection accrues even to non-citizens;

> (ii) second, the failure to inform the plaintiff at the time he was apprehended had deprived the plaintiff of an opportunity to retrieve his passport, which would have established that he had validly entered the country.

Inspector Jeinthan's testimony was that the plaintiff had not complied with his request to produce his identification documents. For the reasons explained at para. 19 et seq, ante, I found this to be improbable. The unchallenged testimony of PW1 was that the plaintiff's sling bag containing his passport was beside a chair in PW1's house. Had Inspector Jeinthan identified himself as a police officer and had the plaintiff been asked to produce his identification documents, then it was extremely unlikely that he would have had defied the request, given that the passport was within easy reach. The more probable truth was that the plaintiff was apprehended without explanation, and importantly, without a reasonable opportunity being afforded to him to produce his identification documents.

Put another way, Inspector Jeinthan could not have had a reasonable basis for his belief that an offence had been committed under the Immigration Act 1959/63 without first having given the plaintiff an opportunity to produce his passport before arresting him. It will be recalled that the plaintiff was initially arrested under s 6(1)(c) of the Immigration Act 1959/63, for having entered Malaysia without a valid pass. In order for Inspector Jeinthan to have formed the belief that an immigration offence had been committed, there must have been a failure by the plaintiff to produce his passport when asked. The evidence established at trial showed that, on balance, the plaintiff had not been afforded this opportunity. Even under the more generous subjective test under s 51(3)(a) of the Immigration Act 1959/63, a reasonable belief on the part of Inspector Jeinthan could not have existed;

(iii) third, and perhaps most egregiously, was the fact that Inspector Jeinthan found it fit to exercise the power to arrest and detain the plaintiff in ignorance of the law.

As explained at para 3, the plaintiff was stranded in Malaysia due to the Government-imposed lockdown to curb the spread of the Covid-19 virus. He had validly entered Malaysia on a social visit pass, but could not leave before the expiry of the validity period of the visit pass.

The 19 March 2020 circular issued by the Director General of the Department of Immigration meant that all foreigners who became stranded in Malaysia due to the imposition of Movement Control Orders could lawfully remain in Malaysia even though the validity period of their immigration passes may have expired.

When cross-examined by counsel, Inspector Jeinthan admitted that he in fact knew of the 19 March 2020 Department of Immigration circular at the time he arrested the plaintiff.

Yet, despite knowing of the circular, he had proceeded to arrest the plaintiff without giving him a reasonable opportunity to produce his travel documents, and had kept the plaintiff in detention because, according to his testimony at trial, the authenticity of the 19 March 2020 Department of Immigration circular needed to have been ascertained by the court.

If he knew of the existence of the 19 March 2020 circular, then surely the plaintiff ought to have been released from custody — at the very latest — on

20 October 2020 when confirmation was received that the plaintiff's passport and visa had been ascertained as genuine. Indeed, on the facts, I am of the view that the plaintiff ought not have been detained at all, if he had been accorded reasonable opportunity to produce his identification documents.

Yet, despite having received confirmation from the Immigration Forensic Centre of the Malaysian Immigration Academy that the passport and visa were genuine, and despite professing knowledge that he knew of the existence and effect of the 19 March 2020 circular at the time of the arrest, Inspector Jeinthan not only did not release the plaintiff from custody, but had proceeded to recommend that he be charged for contravention of s 15(1)(c) of the Immigration Act 1959/63.

It is the business of a police officer to know the law. If ignorance of the law accords an offender no excuse, then it must be doubly so for someone in whom it had been reposed the duty to enforce the law.

But here, Inspector Jeinthan professed to know the law. Yet, his actions were inexplicable if this was indeed true. The only reasonable alternative conclusion must be that he had exercised his powers in furtherance of an undisclosed collateral purpose.

[77] At trial, evidence was received regarding irregularities in the manner in which investigations had been conducted, which hinted at the existence of such a collateral purpose. The initial investigating officer assigned to the case, Inspector Roheswaran Ganesan ('DW1'), agreed with the suggestion of counsel for the plaintiff that the investigation into the theft of the missing statute of the deity was under the jurisdiction of the IPD Seremban, and not IPK Seremban, where Inspector Jeinthan was stationed. However, there was no documentary evidence adduced at trial to show that there had been instructions for the investigations to be taken over by IPK Seremban.

[78] Inspector Roheswaran further testified that he was directed to hand over the conduct of the investigation to Inspector Jeinthan, although in the trial documents, there were no written directions exhibited. This in effect meant that Inspector Jeinthan was the arresting officer, the investigating officer, as well as the recording officer who had taken the statement from the plaintiff.

[79] I was of the view that the evidence adduced at trial fell short of proving the existence of a collateral purpose on the part of Inspector Jeinthan. In the final analysis, it was not necessary for the plaintiff to prove the existence of such a collateral motive to succeed in his case for unlawful arrest and detention against Inspector Jeinthan. Even absent such motive, the plaintiff has successfully established that his arrest and subsequent detention was unlawful.

...

[93] I have no hesitation to find that, on the facts of the present case, there was a sufficiently close connection between the position of Inspector Jeinthan and the wrongful conduct that he had committed to make it just that the Government be made liable for his acts. The arrest had been undertaken by Inspector Jeinthan in the course of his employment. There was a clear connection between the arrest and the nature of his employment, as the arrest had been undertaken in the exercise of his powers of investigations conferred upon an officer of the Royal Malaysian Police.

The third element has also been clearly fulfilled, as the danger to the public of police powers exercised in excess needs little elaboration. Finally, this risk is clearly one that is inherent in Government, and adequate safeguards must exist, not only in the form of adequate laws, but also in putting in place controls and oversight to prevent the abuse of police powers.

[94] I was unable to discern serious conviction in the arguments raised to oppose the contention of vicarious liability on the part of the Government. There were two principal points put forth: first, that liability must first be proven against Inspector Jeinthan, before the Government may be made vicariously liable. This submission was undeniably correct. As I have found liability on the part of Inspector Jeinthan, this requirement has been fulfilled.

[95] Second, it was advanced for the defendants that Inspector Roheswaran had not been named as a defendant in the action, and therefore, based on the principles established in the Federal Court case of *Kerajaan Malaysia & Ors v Lay Kee Tee & Ors*, liability cannot attach against the Government. I must confess that I was unable to follow the reasoning advanced. Clearly, the case of *Lay Kee Tee* prohibits a plaintiff from making a claim against the Government without naming the specific tortfeasor as a party in the action. However, this requirement has been fulfilled in the present case, as Inspector Jeinthan has been made a defendant. Misconduct alleged against Inspector Roheswaran, if any, clearly did not form any part of the causes of action advanced in this case. This did not have any effect on the incidence or extent of the Government's liability for the actions of Inspector Jeinthan.

...

[99] I agreed with Mr Karthig Shan's submission, and awarded RM15,000 per day for the 12 days of unlawful detention as general damages payable. The total general damages payable was thus RM180,000.

[100] The plaintiff also claimed for exemplary damages.

[101] The principles to be applied in determining whether exemplary damages ought to be allowed are explained in the following passage of the judgment of the Court of Appeal in the case of *Sambaga Valli KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784; [2017] CLJU 500; [2017] 1 LNS 500:

> [32] Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, and where this injury has been caused or exacerbated by the exceptional conduct of the defendant.
>
> [33] The exemplary damages or punitive damages — the two terms now regarded as interchangeable — are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a 'contumelious disregard' for the right to the plaintiff. The primary purpose of an award of exemplary

damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff (see *Rookes v Barnard* [1964] 1 All ER 367; *A B v Southwest Water Services* [1993] All ER 609 *Broome v Cassell & Co* [1971] 2 QB 354; and *Laksamana Realty Sdn Bhd v Goh Eng Hwa and another appeal* [2006] 1 MLJ 675; [2005] 4 CLJ 871).

[102] Accordingly, there must have been some exceptional conduct on the part of the defendant before exemplary or aggravated damages would be awarded to a plaintiff. The case of *Rookes v Barnard* restricted exemplary damages to the following three situations:

(i) where they are recognised by statute;

(ii) where the wrong involves oppressive, arbitrary or unconstitutional actions by agents of the Government; and

(iii) where the defendant's tortious act has been done with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical penalty.

[103] In my considered judgment, the circumstances of the case described at para 76(iii) sufficiently justified the award of exemplary damages. The arrest had not been affected on the basis of an innocent mistake, nor based upon an honest belief on reasonable grounds that an immigration offence had been committed. Had an opportunity been given to the plaintiff, I have no doubt that he would have been able to produce his passport to Inspector Jeinthan. Even then, had Inspector Jeinthan entertained further doubts on the authenticity of the passport and visa, checks could have been made without the need to arrest the plaintiff and to place him in custody for 12 days. Most egregiously, Inspector Jeinthan professed to know of the existence and effect of the 19 March 2020 Department of Immigration circular, but yet proceeded to recommend that the plaintiff be charged with the offence of overstaying when clearly general permission to remain in Malaysia had been granted to nonresidents due to the Covid-19 pandemic and due to the ensuing imposition of Movement Control Orders. At the most generous, Inspector Jeinthan was ignorant of the law. At worst, the evidence at trial hinted at some collateral motive, if his own evidence that he was aware of the existence of the 19 March 2020 circular was to be believed. Either way, the second of the three circumstances in *Rookes v Barnard* has been fulfilled.

[104] I assessed exemplary damages at 25% of the restitutive damages awarded. I drew guidance from the following passage in the Court of Appeal decision in *Sin Heap Lee-Marubeni Sdn Bhd v Yip Shou Shan* [2005] 1 MLJ 515; [2004] 4 CLJ 35*:*

48. There is no fixed formula or rate in awarding exemplary damages. In the present appeal, the trial judge awarded the sum of RM900,000. In his judgment the learned judge stated that he followed the formula in *Templeton v Low Yat Holdings Sdn Bhd* [1993] 1 MLJ 443; [1992] CLJU 7 where the court awarded exemplary damages of about 25% of the compensatory damages assessed. In the present appeal the compensatory damages by the learned judge was RM3.2m and 25% of that would be RM900,000. That was how the learned judge arrived at the figure. I see no reason to disturb the award made by the learned judge.

A [105] Accordingly, I assessed exemplary damages to be RM45,000, making the total damages payable to the plaintiff to be RM225,000. I ordered that the liability of the fifth and sixth defendants for such damages and for costs of the action to be joint and several.

B **[20]** The appellants are dissatisfied with the judgment and therefore have on 15 March 2023 appealed to the Court of Appeal.

FINDINGS OF THIS COURT

C **[21]** Our function here is merely that of a review. This is well explained by Zabariah Mohd Yusof FCJ in *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67; [2020] 10 CLJ 1 (FC) as follows with emphasis added by us:

D [71] From the aforesaid authorities, there appears to be a difference in approach taken and applied by the UK Supreme Court and the approach taken by the Malaysian courts. Whilst Lord Reed in *Henderson* separated the four non-exhaustive identifiable errors of a trial judge from the plainly wrong test:

(i) a material error of law;

E (ii) a critical finding of fact which has no basis in the evidence;

(iii) demonstrable misunderstanding of relevant evidence; and

(iv) a demonstrable failure to consider relevant evidence;

F (all of which justifies appellate intervention of a trial judge's decision), this court in *Gan Yook Chin* effectively included them under what amount to the trial judge as being 'plainly wrong'.

[72] The phrase 'lack of judicial appreciation of evidence' used in *Gan Yook Chin* could very well encompass three out of four errors of a trial judge (other than the 'material error of law') said to be identifiable by Lord Reed in *Henderson*, namely:

G (i) critical factual finding which has no basis in evidence;

(ii) demonstrable misunderstanding of relevant evidence; and

(iii) demonstrable failure to consider relevant evidence.

H [73] Given that the issue at present is about identifying situations where the findings of fact by a trial court justify appellate intervention, the other identifiable error of 'material error of law' listed by Lord Reed in *Henderson* can occur when a trial judge erroneously apply legal principles (eg rules of evidence) in the course of making a finding of fact, thus resulting in a lack of judicial appreciation of evidence. For

I example, when a trial judge erroneously placed a burden of proof on a party, that will lead the judge to misdirect himself when he attempts to interpret the factual matrix before him. The commission of material error of law by the trial judge in arriving at his conclusions (eg, the requirement of proof of intention in constructive trust as opposed to express trust), also justifies an appellate court reversing such conclusions.

[74] Thus, whilst there is a slight difference in approach of appellate intervention, both the UK Supreme Court and our Federal Court effectively shares a common thread where it has been held that appellate intervention is justified where there is lack of judicial appreciation of evidence.

[75] The Court of Appeal in Singapore applies the plainly wrong test which is similar to our Federal Court, as illustrated in *Damu Jadhao v Paras Nath Singh* [1965] 2 MLJ 151; [1965] CLJU 30; [1965] 1 LNS 30, when it held:

> The principles under which an appellate court acts when an appellant seeks to displace the conclusion arrived at by a trial judge on questions of fact have been very recently restated by the Privy Council in the case of *Tay Kheng Hong v Heap Moh Steamship Co Ltd* [1964] 1 MLJ 87 [1965] 2 MLJ 151 at p 153; [1964] CLJU 202; [1964] 1 LNS 202 need only refer to a passage of the judgment of Lord Guest when dealing with the matter, where he states:
>
> > Before the Court of Appeal in Singapore was entitled to reject the trial judge's estimate of the credibility of the appellant and Goh Leh they would have to be satisfied that the trial judge's view was plainly wrong and that any advantage which he enjoyed by having seen and heard the witnesses was not sufficient to explain his conclusion.
>
> This case seems to me to be completely dependent on the trial judge's estimate of the credibility of the appellant and his witnesses and nothing that counsel for the appellant has put forward in his arguments before me has persuaded me that the trial judge's view of the credibility of the witnesses before him was in any way plainly wrong.

[76] What is pertinent is that, the 'plainly wrong' test is not intended to be used by an appellate court as a mean to substitute its own decision for that of the trial court on the facts.

[77] It is to be observed that this court in *Tengku Dato' Ibrahim Petra Tengku Indra Petra* had referred to *McGraddie* and *Henderson* and has adopted the *Henderson* approach of the 'plainly wrong' test in determining whether the trial court's findings of fact is reversible upon appeal:

> Recently in *Henderson v Foxworth Investments Ltd and Another* [2014] 1 WLR 2600, the United Kingdom Supreme Court held that in the absence of some other identifiable error, such as a material error of law or the making of a critical factual finding which had not interfered with the factual finding which had no basis in the evidence, an appellate court should not interfere with the factual findings of a trial judge unless it was satisfied that the decision of the trial judge was 'plainly wrong' in the sense that it could not reasonably be explained or justified and so was one which no reasonable judge could have reached, and that if the appellate court was not satisfied that the decision came within that category it was irrelevant that, with whatever degree of certainty, it considered that it would have reached a different conclusion from the trial judge.

[78] Hence following this court's ruling in *Tengku Dato' Ibrahim Petra Tengku Indra Petra* an appellate court should not interfere with the factual findings of a trial judge unless it was satisfied that the decision of the trial judge was 'plainly wrong' where in arriving at the decision it could not reasonably be explained or justified and so

A was one which no reasonable judge could have reached. If the decision did not fall within any of the aforesaid category, it is irrelevant, even if the appellate court thinks that with whatever degree of certainty, it considered that it would have reached a different conclusion from the trial judge.

[79] The outcome of the present appeal would therefore turn upon whether the B findings of the learned trial judge were reasonably made.

...

[148] Given the aforesaid, *we form the view that rather than adopting a rigid set of rules to demarcate the boundaries of appellate intervention insofar as findings of fact are concerned, the 'plainly wrong' test as espoused in decisions of this court should be retained* C *as a flexible guide for appellate courts. As long as the trial judge's conclusion can be supported on a rational basis in view of the material evidence, the fact that the appellate court feels like it might have decided differently is irrelevant. In other words, a finding of fact that would not be repugnant to common sense ought not to be disturbed. The trial judge should be accorded a margin of appreciation when his treatment of the evidence is* D *examined by the appellate courts*.

See also *Perembun (M) Sdn Bhd v Conlay Construction Sdn Bhd* [2012] 4 MLJ 149; [2012] 1 LNS 1416 (CA).

E **[22]** Before us the appellants firstly and primarily submitted that the respondent was properly and lawfully apprehended by the first appellant for an offence under s 6(1) of the Immigration Act 1959/63 and s 406 of the Penal Code on the night of 10 October 2020.

F **[23]** This is in our view an issue of mixed fact and law.

[24] In respect of the former, this necessarily depends on the veracity of the evidence adduced by the material witnesses.

G **[25]** It is settled law that an appellate court is generally reluctant to interfere on findings of fact because this is heavily dependent on the testimony of the rival witnesses of the respective party as is the case here between the first appellant and respondent on exactly what happened on that night. In this regard, the learned High Court judge is best placed to determine the reliability H on the witnesses based on the relative weight to be given to their evidence adduced. The appellate court will defer to the findings of the learned High Court judge who has the audio-visual advantage of assessing the demeanour and credibility of the witnesses to resolve the conflict of oral testimony of the witnesses; see *Abd Latif Sakimin v Public Prosecutor* [2009] MLJU 1828 (FC).

I **[26]** Consequently, and upon our review of the notes of evidence and thereafter the findings of the learned High Court judge in paras 73 to 79 particularly para 76 of the GOJ, we do not find that the learned High Court judge has been plainly wrong in any way that attracts appellate intervention.

[27] Additionally, we find that the raid conducted in the house was for the misappropriation or theft of a temple deity statue but not for illegal overstayers. The respondent was thereafter never further investigated nor charged for misappropriation or theft under ss 378 and 403 of the Penal Code respectively. Hence, we concur with the learned High Court judge that the first respondent's justification to arrest and detain the respondent for an offence under the Immigration Act 1959/63 seems contrived in afterthought. Otherwise, the first appellant would have demanded to see the passport and other identification papers of the respondent in the house (where the respondent's bag containing his travel documents was placed and spontaneously retrievable to show to the first appellant) rather than in the car. It smacks of a collateral purpose on the part of the first respondent as alluded to by the learned High Court judge.

[28] We are mindful that the appellants submitted that the respondent need not, pursuant to art 5 of the Federal Constitution and the case of *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 MLJ 351 (FC) be informed of his arrest forthwith but as soon as may be possible. This is however fact sensitive and it depends on the actual circumstances that existed. In this case, there is no evidence that the respondent was violent in attempting to resist arrest at all material times in the house. The first appellant did not also give cogent evidence as to why he was unable to inform the respondent of his arrest with reasons thereto. We consequently concur with the learned High Court judge that the first appellant did not honestly belief on reasonable grounds that an immigration offence had been committed by the respondent. We also noted that s 51(3)(a) of the Immigration Act 1959/63 posed a higher degree of suspicion before arrest compared to s 23(1)(a) of the Criminal Procedure Code as found by the learned High Court judge.

[29] Secondly, it is not in dispute here that after the respondent was arrested in the car, he was detained for 12 days before he was charged in the magistrates court. The appellants however tried justifying that the time taken was reasonable because of the need to verify the authenticity of the respondent's passport and visa as well as applicability of the Circular. The appellants ultimately found that the respondent's passport and visa are genuine notwithstanding that the latter had expired. Likewise, the Circular was indeed issued by the Malaysian Immigration Department but in force during the period of MCO. The Circular however, has thereafter been replaced by the Recovery Movement Control Order ('RMCO').

[30] Upon our review, we concur with the learned High Court judge that the First appellant was callous by having persisted to detain the respondent notwithstanding he knew of the existence of the Circular. Furthermore, the original passport of the respondent has been produced to him shortly after the respondent was brought to the Seremban police contingent headquarters.

A Although, the MCO has been replaced by the RMCO, we do not think that this has made a material difference on the facts and circumstances of this case.

[31] Further still, we are also of the view that the 12 days which had elapsed to investigate the respondent's immigration status is prima facie unreasonable in this current age of electronic data and information storage and retrieval. The appellants did not provide cogent detailed account of the length of investigative time taken, particularly problems that were encountered by them to satisfy the court as to its reasonableness. This is unacceptable particularly when a man's liberty is denied during this period of investigation in infringement of his rights under art 5 of the Federal Constitution.

[32] As a result of the cavalier conduct of the first appellant in the course of his employment, it follows that the second appellant must be vicariously liable as his employer. Thus, we concur with the finding of the learned High Court judge that they must both be liable to the respondent for wrongful arrest and detention.

[33] We observed that the appellants did not challenge on the consequential award of restitutive damages awarded to the respondent by the learned High Court judge.

[34] However as to exemplary or punitive damages awarded to the respondent which has been challenged by the appellants, we concur with the learned High Court judge that it is justified due to the wrongful, oppressive, arbitrary or unconstitutional action by the First appellant who is an agent of the second appellant.

CONCLUSION

[35] For the foregoing reasons, we find that the appellants' appeal is unmeritorious. The learned High Court judge was not plainly wrong both in respect of the finding of fact or conclusion of law that warrants appellate intervention.

[36] Consequently, the appeal is unanimously dismissed and the judgment of the High Court is affirmed. The appellants shall pay costs of RM30,000 here to the respondent.

Appeal unanimously dismissed; High Court's decision affirmed.

Reported by Ashok Kumar